NO. 92-1265

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1992

BRUCE B. SCHWAGER, et al.,
*Petitioners,*

v.

TEXAS COMMERCE BANK, N.A., et al.,
*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

## PETITIONERS' REPLY/SUPPLEMENTAL BRIEF

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*Pro Se*

## QUESTIONS PRESENTED

1. Were Petitioners denied their right to Due Process and Equal Protection of the law and access to the Court as required by the Fifth and Fourteenth Amendments to the U.S. Constitution and the Texas Constitution art. I §§ 3, 13 and 19 due to the method of electing judges along with the unlimited campaign contributions allowed? Is the Texas Election Code Section 251.003 constitutional? Did the hundreds of thousands of dollars in campaign contributions made by attorneys for Baker & Botts, Respondent's law firm, to the trial judge Don Wittig, the 1st Court of Appeals Judge Murray Cohen and successful candidates to the Texas Supreme Court constitute lack of access to the court and an obstruction of justice?

2. Was Petitioner Bette R. Schwager deprived of her rights and property without Due Process and Equal Protection of the law as required by the Fifth and Fourteenth Amendments to the U.S. Constitution and the Texas Constitution art. I §§ 3, 13, 14 and 19 when she was not allowed to prosecute her claims and defend herself against the taking of her property?

3. Were Petitioners denied their constitutional right of Due Process under the Fifth and Fourteenth Amendments to the Constitution of the United States and the Open Courts Provision of the Texas Constitution art. I §§ 3, 13 and 19 by not being afforded a fair opportunity to obtain a meaningful appeal on the merits of the case when the court of appeals struck 43 of Appellants' 44 points of error for procedural defects?

4. Were Petitioners denied their right to Due Process and Equal Protection of the law as required by the U.S. Constitution Fifth and Fourteenth Amendments and the Texas Constitution art. I §§ 3, 13 and 19 by the Courts of Texas not applying the law equally to all citizens of the U.S. and the State of Texas? Were Petitioners denied the benefit of the final judgment entered in their favor on Oct. 14, 1986? (Appendix "W") by 1st Court of Appeals ruling on March 12, 1992 (Appendix "Y"). Were

Petitioners denied their constitutional rights by the Texas courts assessing judgment against them without jurisdiction?

5. Were Petitioners denied their right to Due Process and Equal Protection of the law as required by the U.S. Constitution Fifth and Fourteenth Amendments and the Texas Constitution art. I §§ 3, 13 and 19 by the courts of Texas' use of false and fraudulent facts to support their opinion along with the allowed perjury by the trial court?

Note: *Schwager v. Texas Commerce Bank, N.A.*, 813 S.W.2d 225 (Tex. App.—Houston 1991) (per curiam). This case was stated in the U.S. Supreme Court Judicial Highlights November 1991, page ix West Supreme Court Reporter Vol. 112 November 1, 1991 No. 1.

## PARTIES TO THE PROCEEDINGS

Pursuant to the Texas Rules of Appellate Procedure, Petitioners certify that the following is a complete list of the names of all parties:

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

## PETITIONERS' REPLY/SUPPLEMENTAL BRIEF

### PRAYER

Petitioners respectfully request that this Court review this reply prior to making a decision in this case. Rule 15 of the U.S. Supreme Court allows for the filing of a reply, and Petitioners pray that this Honorable Court review this Reply/Supplemental Brief prior to deciding this case on its merits. On March 27, 1993, this Court was notified that Schwagers would file a Reply/Supplemental Brief on or before April 2, 1993. (Appendices "A" & "B" of this document).

## PRELIMINARY STATEMENT

To put the previous seven years of litigation in this case in proper perspective, the following quote of Theodore Roosevelt is offered:

> It is in the highest degree unwise to submit to any wrong without making an immediate and resolute effort to avenge it upon the wrongdoers, at no matter what the cost of risk and trouble. To submit tamely and weakly to theft or to any other injury is to invite almost certain repetition of the offense.

The Chief Justice of the Texas Supreme Court, Thomas R. Phillips, has clearly demonstrated his belief in the unconstitutionality of the method of selecting judges in Texas. His arguments alone are justification for this Court to rule for Petitioners. Examples are as follows: "Texans want and deserve judges who are fair, impartial and free of any suspicion that campaign contributions might influence their decision." (Appendix "Z" of Petition for Writ of Certiorari). Judge Phillips agreed with the Schwagers and admitted the validity of the Petition for Writ of Certiorari to the Supreme Court of Texas when he stated, "The proposed settlement does nothing to decrease the influence of partisan politics and big money in judicial elections." (Appendices "B" and "F" of this document).

The U.S. Constitution, Article II, sec. 2 and Article III sec. 1 (Appendix "G" of this document) mandate the need for an independent judiciary. "To my mind an independent judiciary is perhaps the most essential character of a free society." Sam Ervin Jr., *Separation of Powers: Judicial Independence*, 35 Law and Contem. Probl. 108, 121 (1970).

Again, Baker & Botts has made false statements and misrepresentations in this case as predicted by Schwagers in their Petition for Writ of Certiorari as shown by Baker & Botts' letter "Response Brief" to this Court on March 25, 1993. (Appendix "E" of this document). Petitioners adamantly reject their allegations and include as Appendix "H" of this document their Reply Brief filed in the Texas Supreme Court to support their objection to TCB's letter "Response Brief." Petitioners also objected to the sending and

content of Baker & Botts' letter. This Court is requested to review the letter (Appendix "B" of this document) sent to the Court by Petitioners for details. The combination of a large bank and a large defendants' law firm has so far made it impossible for Schwagers to obtain justice. As Thomas Jefferson stated, "Banking establishments are more dangerous than standing armies."

The request for an extension of time by Respondents (Appendix "D" of this document) clearly reenforced the need for this Court to approve Petitioners' Writ of Certiorari. The justification for their extension being the size of the record and the number of Schwager's Points of Error (44) proves beyond a doubt the unconstitutionality of the First Court of Appeals' ruling striking 43 of the points of error for procedural defects.

It was incredible that on March 25, 1993 TCB, through its attorney Baker & Botts, sent a letter "Response Brief" to this Court (Appendix "E" of this document) stating that it was not going to file a Response Brief. However, TCB attempted to respond to Petitioners' Writ of Certiorari in paragraph 2 of their letter. The conspiracy between TCB and the Limited Partners in this litigation is ongoing as evidenced by the fact that the Limiteds did not file a Respondents' Brief.

Petitioners respectfully request that this Court request and review the entire record of this case as allowed by *Rule 16* of the Supreme Court of the United States. Justice cannot be served until at least one court reviews the record in this case and makes a decision on the merits rather than campaign contributions and personal bias and prejudice.

## REASONS FOR GRANTING WRIT

**1. Petition for Writ of Certiorari to the Supreme Court of Texas Issue #1, page 11.**

This issue is true and correct as written.

The U.S. Court of Appeals 5th Circuit ruled that the Texas Election Code was unconstitutional due to lack of minority representation in the election of judges in certain counties.

However, this was overturned when the full court decided to consider this question on 2/11/93. *League of United Latin Am. Citizens v. Clements*, No. 90-8014. Judge Sharolyn Woods, a defendant appellant in this case, also believes that the *real problem* in the election of judges in Texas was campaign contributions, not the lack of minority representation. This was stated in her memo to Harris County judges dated 2/12/93. (Appendix "J").

The Chief Justice of the Texas Supreme Court, Tom Phillips, also again stated that campaign contributions and the appearance of impropriety caused by this attempt to influence judges was a major problem in the selection of judges. Article in the *Austin Statesman* paper dated 3/10/93, p. A-17. The Attorney General of Texas in the same article demonstrated again that the real culprit in the selection of judges in Texas was campaign contributions. Expensive partisan elections tend to **CORRUPT THE JUDICIARY**. "AG is Texas Lawyer" *Houston Post* Editorial, 2/10/93, p. A-16.

On March 16, 1993, Bruce Schwager contacted the Texas Supreme Court to inquire about procedures used in reviewing Petitions for Writ of Error. He was told at that time that these procedures were *secret*. Prior to this call, Schwager was told that a yes vote by four (4) Justices was required before the Texas Supreme Court would accept a Writ for review. Secrecy of the Texas Supreme Court was discussed in Appendix "X" of the Petition for Writ of Certiorari. Clearly, this demonstrates that this would be impossible due to large contributions given to seven members of the Court. It should be noted in reviewing (Appendix "I" of this document) that the contribution breakdown is between Plaintiff's attorneys and Defendants' attorneys. Baker & Botts is an extremely large *defense* law firm. *How can an educated vote be made when the Texas Supreme Court operates in secret?*

It is impossible for a pro-se litigant or a solo practitioner who does not contribute to the judges of Texas at all levels to receive a fair and impartial hearing. This clearly deprived their clients of the right to Due Process as provided by the U.S. Constitution and the Texas Constitution. Due to the excessive campaign contributions to the supreme court and the district court, Baker & Botts should have declined representation of TCB in this case. There was

not any appearance of *proper* conduct committed in this case by the attorney and courts of Texas in this action.

As discussed in Appendix "X" of the Petition for Writ of Certiorari, "bundling" of campaign contributions to judges makes it extremely difficult to ascertain which law firms are contributing to certain judges. An investigation showed that Judge Don E. Wittig not only received thousands of dollars in campaign contributions from Baker & Botts and/or their attorneys, he was promised support for his appointment as a federal judge. These among other reasons were the basis for the outrageous conduct by Judge Wittig. Some outrageous acts are shown as follows:

1. Judge Wittig told court personnel he was out to get Schwager and his attorney, R. Dennis. Shortly thereafter, on June 23, 1989, Judge Wittig struck Schwagers' punitive damages and attorneys' fees for failure to file a pretrial order. Schwagers filed a motion for rehearing which was held and at which time Judge Wittig upheld his decision. However, after the hearing, Judge Wittig in a discussion with Mr. Schwager inferred that if Mr. Schwager fired Mr. Dennis, he would reinstate the stricken pleading. Mr. Schwager did this but Judge Wittig did not reinstate the punitive damages and attorneys' fees. Mr. Dennis had been accused of drug use by the receiver, Dale Everett, in a hearing before Judge Wittig. Mr. Schwager filed a Writ of Mandamus with the First Court of Appeals against Judge Wittig which was denied. The First Court of Appeals refused to even consider the Writ of Mandamus. **The unconscionable conduct of Judge Wittig in this matter is shown by his own Court Rules.**

   Rule 17. Sanctions should be the last resort of attorneys and litigants who have tried all manners of communication, reason, courtesy, professionalism and accommodation first.

   **RULE 18(2). PRE-TRIAL ORDER IS REQUIRED IN ALL CASES AND MUST BE FILED *ONE WEEK BEFORE DATE OF TRIAL.*** (Emphasis added.) Note: Order striking pleading of Schwagers was issued on June 23, 1989. *Date of trial was Nov. 8, 1989*, some *five (5)* months later.

2. Attempted to hold Schwager in contempt of court several times when he did not have jurisdiction.

3. Refused to follow the law and rules of procedure of the State of Texas in order to have TCB win the lawsuit.

4. Stated before the trial that he was not going to let the Bank lose the lawsuit.

5. Retried Bruce B. Schwager twice for the same offenses.

6. Allowed perjury to be committed in his court before and during the trial of Case #87-14551.

7. Violated Bruce Schwager's constitutional right to a jury trial before sentencing him to jail and fine for contempt of court.

8. Threatened Bette Schwager with the possibility of being *shot by the bailiff* during the trial of Cause #87-14551.

9. As the trial judge controls the outcome of the case regardless of the presence of a jury, his independence is *crucial* to obtaining a fair hearing. The jurors were frequently dismissed when conversations were taking place between the lawyers and the judge. **The judge decided what evidence the jury should hear and what should not be divulged to them.** The record of this case shows that Judge Wittig wrongfully withheld evidence from the jury that was critical to Schwagers.

Note: Judge Wittig's unconscionable conduct and rulings were not overturned as the 1st Court of Appeals of Texas struck 43 of Petitioners' 44 points of error for procedural defects. (Refer to record of the case and Schwagers' Petition for Writ of Certiorari.)

The present unconstitutional selection system of judges in the State of Texas allows lawyers to contribute to the election of a judge and then practice in front of that judge and neither the judge nor the lawyer are required to disclose this fact to the opposing parties. Would poor citizens like Schwagers dare to believe that a judge might be influenced by a money payment or that a lawyer might donate money with the expectation of something in return?

The answer is clearly "Yes" as demonstrated by Schwagers' Petition for Writ of Certiorari and this document.

2. **Petition for Writ of Certiorari to the Supreme Court of Texas Issue #2, page 15.**

This issue is true and correct as written. No further comment is required at this time.

3. **Petition for Writ of Certiorari to the Supreme Court of Texas Issue #3, page 18.**

This issue is true and correct as written. No further comment is required at this time.

4. **Petition for Writ of Certiorari to the Supreme Court of Texas Issue #4, page 22.**

This issue is true and correct as written.

History shows that judges who received large campaign contributions have put the interests of the contributors above that of the citizenry, and are engaged in legislating law from the bench in defiance of statutory and case law, constitutional tripartite government and their oath to uphold the law and the Constitution. Seemingly, the fundamental principle of stare decisis, or precedential law, has been disregarded and renounced in every forum in favor of campaign contributions and personal bias and prejudice. Clearly, the trial court has changed the statutes and case law in favor of the large corporation, TCB, and the large defense law firm, Baker & Botts, thus denying the Schwagers their fundamental right of due process of law.

In *King v. Finch*, 428 F.2d 709 (5th Cir. 1970), the court wrote:

> We do not dispense with the possibility that there might be a case in which the application of new standards or procedures to pending cases might interfere with the judicial power as it was created by the Constitution. It is clear, for example that a sudden change in procedure may constitute a denial of due process.

Certainly, this has occurred in the instant case. Schwagers' due process rights were obliterated by the abrupt and capricious and

biased manner in which the case was tried and ruling made in the courts of Texas.

Due process itself is not a technical conception with a fixed content unrelated to time, place and circumstances: It is a general requirement that legal processes follow the forms of law, be appropriate to the case, and be just to the parties affected. *Joint Anti-Fascist Refugee Committee v. McGrath* 341 U.S. 123, 91 S. Ct. 6024, 95 L. Ed. 817 (1951). Texas courts have refused to consider this case on its merits as previously set out by Petitioners. Nor have they addressed the requirement that the legal process follow the forms of law and serve the ends of justice. Obviously, as shown in this case, where statutory laws and precedential court decisions are disregarded during legal process, there is no due process. Due process cannot be obtained when the Texas courts establish special conditions based on campaign contributions and personal bias and prejudice. Due process applies to the method of making a judicial decision as well as protection of procedural and substantive rights. *State ex rel. Merriman v. Ball*, 116 Tex. 527, 296 S.W. 1085 (1927).

**5. Petition for Writ of Certiorari to the Supreme Court of Texas Issue #5, page 26.**

This issue is true and correct as written.

In *The Best Defense*, professor Allen Dershowitz states of the "elite" legal system, corruption and hypocrisy of top level judges that "one working title for his book was *Black Robes, White Lies*"; "that would have been appropriate because lying, distortion, and other intellectual dishonesty are endemic among judges. In my twenty years of experience in the practice of law, I have been more disappointed by judges than by any other participants in the criminal justice system." His book states "how pervasive judicial dishonesty has become"; he ponders "why judges are permitted to get away with, and indeed are often praised for this kind of intellectual dishonesty, is an important and largely unanswered question confronting the American legal system." He claims that students are "constantly exposed to the temptation to cheat elite" by "observing the respected judge who falsely claimed to have read a transcript." "Cheat elite is the most insidious form of corruption

in the American legal system today because nobody tells those who practice it that they are as corrupt as those who take bribes."

The "cheat elite," judicial fraud, obstruction of justice, deprivation of access to the courts or due process, unfair tribunal, invidiously discriminatory animus, or whatever the label, this putrid process confronts the Supreme Court who are voluntarily sworn before God and the people to oversee and administer this honest and moral anchor of our nation. A lonely legal ethicist, professor Monroe Friedman, presented his study of "frivolous and vexatious" judicial opinions to the judicial conference of the federal circuit:

> Frankly, I have had more than enough of judicial opinions that bear no relationship whatsoever to the case that have been filed and argued before the judges. I am talking judicial opinions that falsify the facts of the cases that have been argued, judicial opinions that make the disingenuous use or omission of material authorities, judicial opinions that cover up these things with no publication and no citation rules.

This is exactly what Judge Cohen of the Texas First Court of Appeals perpetuated on Schwagers when he struck 43 of their 44 points of error for procedural defects. He further wrongfully changed the ruling in Case #86-0736 without jurisdiction based on false information.

## CONCLUSION

### ANY REASONABLE PERSON WOULD CONCLUDE THAT CAMPAIGN CONTRIBUTIONS FROM LAWYERS TO JUDGES ARE LEGALIZED BRIBERY.

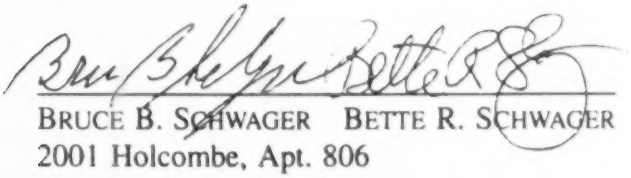
James Madison, in proposing the Bill of Rights, emphasized that *independent* tribunals of justice will consider themselves in a particular manner the guardian of those rights. I *Annals of Congress*, 439 (1789). The judiciary at all levels, federal, state, city, county, etc., must be independent. Even the appearance of impropriety cannot be tolerated. John Marshall in 1788 showed the importance of an independent judiciary when he stated, "To what

quarter will you look for protection from an infringement on the Constitution if you will not give the power to the judiciary?" The U.S. Constitution, Article II, Section 2 and Article III, Section 2 (Appendix "G" of this document) mandate that federal judges be appointed and serve for life, so as to allow for an independent judiciary. Archibald Cox, *Courts and the Constitution* (1987). Thus, it is critical that the U.S. Supreme Court declare the Texas Election Code for judges unconstitutional and require that judges in Texas be selected based on the federal system.

Who protects my rights, our rights, the rights of those not blessed with the financial ability to invest in the campaign contribution franchise?

On March 27, 1993, Judge Tom Phillips, Chief Justice of the Texas Supreme Court, objected to the proposed order signed by Governor Richards of Texas relating to *League of United Latin American Citizens v. Clements*, No. 908014. (Appendix "F" of this document.) Prior to this date, on March 26, 1993, Bruce Schwager wrote a detailed analysis of this settlement as set out in Appendix "C" of this document. The content of this report closely parallels the view of Judge Phillips. This Court has the opportunity to dispense justice to all citizens of the State of Texas and preclude the untold expenditure of taxpayer dollars by now ruling that the system of selecting judges be changed to a federal system or to an appointment/merit system now being used by some 33 states of the Union. This ruling would make moot the continuing litigation in *League of United Latin American Citizens v. Clements*, No. 908014.

Respectfully submitted,



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*Pro Se* (Verification Appendix "K")

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**APPENDIX A**

2001 Holcombe #806
Houston, TX 77030
March 16, 1993

Mr. Frank Lorson
Chief Deputy
The Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: No. 92-1265 Bruce B. Schwager, et al. v. Texas Commerce Bank, N.A., et al.; On Petition for a Writ of Certiorari to the Supreme Court of Texas.

Dear Mr. Lorson:

Bruce B. Schwager and Bette R. Schwager, Pro Se Petitioners in the above stated action, respectfully request the following:

1. Thirty (30) days (April 26, 1993) to file a reply to Respondents' Brief. The time for filing Respondents' Brief has been extended 30 days (March 26, 1993) by the U.S. Supreme Court, letter dated Feb. 25, 1993.

2. An increase to 20 pages for Petitioners' Reply Brief.

3. Delay consideration of Respondents' brief until after Petitioners' filing of their reply brief.

Note: It is critical that Petitioners file a reply brief, as Respondents have made false statements and misrepresented the facts of this case in the courts of Texas. (Petitioners' Issue #5).

The reason used for the extension of time requested by Respondents in which to file their brief supports in part Petitioners' requests herein stated.

At the present time, the Texas Election Code's (Petitioners' Issue #1) constitutionality is being considered by the United States Appeals Court, Fifth Circuit. League of United Latin American Citizens v. Clements, No. 908014, Feb. 11, 1993. (Encl. "A"). The ruling in this case could possibly affect argument to be made in Petitioners' reply brief.

It is incredible that a law firm with hundreds of attorneys and paralegals (Encl. "B") and the unlimited funds of one of the largest banks in the United States requested and received an extension of time to file Respondents' brief. Further, this litigation has been ongoing for approximately six (6) years, transcending the Texas district, appeals and supreme courts.

It is now clear that Baker & Botts requested their extension of time so as to ensure that Respondents' brief would be filed subsequent to former Republican Secretary of State James Baker becoming a "senior" partner of the law firm. James Baker was previously a member of the law firm of Andrews & Kurth. (Encl. "B").

Thank you for your usual courtesy and cooperation.

Yours truly,

Encl. "A"
Encl. "B"

/s/ Bruce B. Schwager Bette R. Schwager
Pro Se Litigants

cc: Mr. Joseph D. Cheavens (Encl. "A" & "B")
Mr. Newton B. Schwartz (Encl. "A" & "B")
Mr. Neil S. Levin (Encl. "A" & "B")

**APPENDIX B**

2001 Holcombe #806
Houston, TX 77030
March 27, 1993

Mr. Frank Lorson
Chief Deputy
The Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: No. 92-1265 Bruce B. Schwager, et al. v. Texas Commerce Bank, N.A., et al.; On Petition for a Writ of Certiorari to the Supreme Court of Texas.

Dear Mr. Lorson:

In view of the fact that TCB through its attorney, Baker & Botts, has seen fit to file a "Response Brief" in the form of a letter dated March 25, 1993 which violates Rule 15 of the U.S. Supreme Court, Petitioners request that this "response" be dismissed.

The response letter does not even reach the level of a motion which should not be received by this Court as set out in Rule 15.4. Clearly, Respondent TCB's letter is not only an attempted Response Brief, but also a request to dismiss the Petition for Writ of Certiorari.

Rule 15.1 in part states that counsel are admonished that they have an obligation to the Court to point out any perceived misstatements of fact or law in the brief in opposition, and not later. Certainly, overbroad, unverified, unreferenced, outrageous, false, and baseless statements made in Paragraph 2 of Respondent TCB's

letter to this Court do not fulfil the preceding requirement. Further, this letter does not mention misstatements of fact or **LAW**.

Note: Bruce Schwager has sworn to the truthfulness of his pleadings under the penalty of perjury.

With no qualified response being filed to Petition for Writ of Certiorari to the Supreme Court of Texas, this Court should grant Schwagers' Petition as demonstrated by Rule 15.1.

However, Petitioners will file with this Court on or before April 2, 1993 a Reply/Supplemental Brief which will be in accordance with the Rules of the U.S. Supreme Court.

Petition for Writ of Certiorari to the Supreme Court of Texas issue #1 pertaining to the election of judges in the State of Texas, alone warrants a review by the U.S. Supreme Court.

This Court has the opportunity to dispense justice to all citizens of the state of Texas and preclude the untold expenditure of taxpayer dollars by now ruling that the system of selecting judges be changed to a federal system or to an appointment/merit system now being used by some thirty odd states of the Union. This ruling would make moot the continuing litigation in League of United Latin American Citizens v. Clements, No. 908014, now before the U.S. Court of Appeals, Fifth Circuit.

Thank you for your usual courtesy and cooperation.

Yours truly,

/s/ Bruce B. Schwager Bette R. Schwager
Pro Se Litigants

cc: Mr. Joseph D. Cheavens
Mr. Newton B. Schwartz
Mr. Neil S. Levin

P.S.: **Chief Justice of the Texas Supreme Court Tom Phillips agreed with the Schwagers and admitted the validity of their Petition for Writ of Certiorari to the Supreme Court of Texas when he stated, "The proposed settlement does nothing to decrease the influence of partisan politics and big money in judicial elections."** (Underlined for emphasis). Houston Chronicle, March 27, 1993, page 25A (League of United Latin Americans v. Clements, No. 908014).

# APPENDIX C

## Comment on Proposed Order (*LULAC v. Clements*)

The Governor of Texas signed a proposed order in the *LULAC* case on March 25, 1993. This proposed order would only compound an existing problem with the election of judges in the State of Texas. The effect of this proposal would completely destroy any possibility that the judiciary in Texas would be independent as required by the Constitution of the United States.

It has been demonstrated in the past that Texas has been unable to solve its own problems without federal intervention. The jail question is an excellent example of this.

Eventually, this Court will be required to decide the issue of the Texas Election Code for judges in the State of Texas.

As this issue is now before the U.S. Supreme Court, it behooves the court to decide this issue now and declare the Texas Election Code for judges unconstitutional. Election of judges in Texas should follow the federal system or some type of appointment/merit system. Thirty-three states have changed to this type of system, and Texas is the only state that does not limit to some extent campaign contributions to judges.

When Arizona changed to an appointment/merit election, the quality of the judiciary improved 100 percent, and this change solved the need for campaign contributions from attorneys. U.S. Supreme Court Justice Sandra Day O'Connor, Appendix "K," p. K-3, of the Petition for Writ of Certiorari to the Supreme Court of Texas.

## APPENDIX D

**BAKER & BOTTS**
L.L.P.
ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS 77002-4995

G-43,606 February 23, 1993

Mr. Frank Lorson
Chief Deputy
The Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

**VIA FEDERAL EXPRESS**

Re: No. 92-1265, *Bruce B. Schwager, et al. v. Texas Commerce Bank, N.A., et al.*; On Petition for a Writ of Certiorari to the Supreme Court of Texas.

Dear Mr. Lorson:

As counsel for two of the Respondents, Charles Best and Texas Commerce Bank, N.A. (collectively "Texas Commerce Bank") in the above-styled action, I respectfully request an extension of forty (40) days in which to file Respondent's Brief in Opposition to Petitioners' Petition for Writ of Certiorari. Respondents' Brief in Opposition is currently due February 24, 1993, and this is Respondents' first request for an extension.

The trial court transcript underlying this action consists of approximately 5,000 pages, and the Petition for Writ of Certiorari impacts each of Petitioners' 44 Points of Error from the underlying appeals. While Texas Commerce Bank denies that petitioner's petition raises any viable arguments regarding federal law, petitioners raise a number of unusual arguments in the Petition for

Writ of Certiorari, which require Texas Commerce Bank to review both the trial transcript and appellant record in order to adequately address the points in opposition to the Petition for Writ of Certiorari.

Thank you for your usual courtesy and cooperation.

Very truly yours,

/s/ Joseph D. Cheavens
Attorney for Respondents
Texas Commerce Bank, N.A.
and Charles Best

cc: Mr. Bruce B. Schwager
Ms. Betty R. Schwager
Mr. Newton B. Schwartz
Mr. Neil S. Levin

L1130/0099/09NX01

## APPENDIX E

**BAKER & BOTTS**
L.L.P.
ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS 77002-4995

G-43,606 March 25, 1993

Mr. Frank Lorson **VIA FEDERAL EXPRESS**
Chief Deputy
The Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: No. 92-1265, *Bruce B. Schwager, et al. v. Texas Commerce Bank, N.A., et al.*; On Petition for a Writ of Certiorari to the Supreme Court of Texas.

Dear Mr. Lorson:

In view of the fact that this case clearly does not warrant review by this Court, Respondents Charles Best and Texas Commerce Bank, N.A. (collectively "Texas Commerce Bank") respectfully waive the right to file a brief in opposition to the petition for writ of certiorari to the Supreme Court of Texas.

Texas Commerce Bank requested and received an extension of the time in which to file a brief in opposition so that it could review the trial transcript and appellate record in order to adequately address the points in opposition to the petition. Upon review, it has become abundantly clear to Texas Commerce Bank that the petition is completely without merit and based upon unfounded allegations of bribery, improper influence and perjured testimony, as well as gross mischaracterizations of the proceedings below. No

"special and important reasons" exist sufficient for the granting of the petition for a writ of certiorari. Texas Commerce Bank respectfully requests leave to file a response to the petition should this Court wish to see one, however.

Thank you for your usual courtesy and cooperation.

Very truly yours,

/s/ Joseph D. Cheavens
Attorney for Respondents
Texas Commerce Bank, N.A.
and Charles Best

cc: Mr. Bruce B. Schwager
Ms. Betty R. Schwager
Mr. Newton B. Schwartz
Mr. Neil S. Levin

L1748/WP09/01EH04

## APPENDIX F

# Justice takes constitutional approach

### Phillips opposes lawsuit on judges' elections

By R.G. Ratcliffe
Houston Chronicle
Austin Bureau

AUSTIN — Texas Supreme Court Chief Justice Tom Phillips on Friday said any change in how Texas chooses its judges should be done by a constitutional amendment approved by voters, not by a lawsuit settlement.

Phillips said he will oppose an effort to use a proposed lawsuit settlement to change how the state's top counties select their trial court judges.

"As a matter of sound policy, no change of this magnitude should be made by mere settlement of a lawsuit," Phillips said.

"The proposed settlement does nothing to decrease the influence of partisan politics and big money in judicial elections," he said. "All it does is remove the right of the people to vote for most of their judges in the affected counties."

Phillips, a Republican, is a named defendant in the lawsuit the NAACP and the League of United Latin American Citizens brought against the state in an effort to change how judges are elected in the state's most populous counties.

Phillips was not included in talks between the state's Democratic leaders and the minority plaintiffs that resulted in a proposed settlement that was signed Thursday.

But Attorney General Dan Morales, a Democrat, described Phillips as a "nominal" party in the lawsuit who did not need to be included in the negotiations.

"We believe the real party of interest in this litigation is the state of Texas," Morales said.

Gov. Ann Richards, Lt. Gov. Bob Bullock and House Speaker Pete Laney off on signed a proposed lawsuit settlement that would halt the county-wide election of most trial court judges in Harris, Dallas, Bexar, Jefferson, Tarrant, Travis, Lubbock, Midland and Ector counties.

Morales said the plan will be presented to the U.S. 5th Circuit Court of Appeals as a proposed lawsuit settlement once it receives a majority vote of the Texas Legislature in the form of an endorsement resolution.

A 5th Circuit judicial panel in January ruled that the county-wide system of electing trial court judges dilutes minority voting strength. In Harris County, only two of 59 elected district judges are black. The full 5th Circuit is set to review that decision next month.

The proposed settlement calls for electing 50 of the counties judges from the county's 25 state House districts. The only residency requirement would be that a judicial candidate live in Harris County.

Nine Harris County judges would be elected at large. Those include the 127th District Court (civil); 177th Criminal); 61st (civil); 230th (criminal); 245th (family); 310th (family); 311th (family); 313th (juvenile) and 312th (family).

Morales said the proposed settlement also is drafted to "moot" possible opposition for defendant district court judges Sharolyn Wood of Houston and Harold Entz of Dallas.

Morales said their districts will be left as county-wide, at-large districts and not be made more restrictive judicial subdistricts as with other courts.

"These offices don't belong to politicians. They don't belong to individuals. They belong to the people of Texas," Morales said.

"I don't claim any property rights other than those bestowed on me by the voters of Harris County," Wood said.

Wood said she plans to fight the proposal, which she described as "wheeling and dealing, trading in the dark, selling out the judiciary of Texas."

She said judges elected in House districts could become pawns of legislators who control judicial funding and partisan gerrymandering.

Wood noted that the Harris County judiciary presently is split about in half between Republican and Democratic officeholders. But the Harris County House delegation has 10 Republican districts and 15 Democratic districts.

State Sen. Rodney Ellis, D-Houston, who has been pushing for the adoption of judicial elections by districts, praised the proposed settlement. "The settlement demonstrates the state's new commitment to the civil rights and voting rights of minorities, who historically have had to wait for the courts to mandate progress on these issues," he said.

## APPENDIX G

# The Constitution of the United States

### Article. II.

**Section. 2.** . . . .

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Minsters and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

### Article. III.

**Section. 1.** The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

APPENDIX H

NO. D-2528

****

IN THE SUPREME COURT OF TEXAS

****

BRUCE B. SCHWAGER, ET AL.

Petitioners,

v.

TEXAS COMMERCE BANK, N.A., ET AL.

Respondents.

****

PETITIONER'S REPLY BRIEF

TO THE HONORABLE SUPREME COURT OF TEXAS:

Petitioners Bruce B. Schwager, Bette Schwager, B.B.M.M., Ltd. and B.M. Bayou Corporation, hereinafter called "Schwagers" or "Petitioners" respectfully file this Reply to Respondents Texas Commerce Bank, N.A. and Charles Best, hereinafter called "TCB" or "Respondents'" Response to Petitioners' Application for Writ of Error. Respondent's Brief was received by Petitioners on July 22, 1992. Petitioners did *not* receive briefs from any of the Limiteds until July 29, 1992. Petitioners object to the Limiteds' brief, and it should not be considered in the Supreme Court's ruling.

## OPENING STATEMENT

Petitioners' belief that the Texas Supreme Court will rule in their favor has been reinforced by a review of Respondents' Brief. The judgment against Petitioners should not only be reversed because it is legally incorrect, but also to prevent chaos in the Texas legal system. A ruling against "Schwagers" will send the message to all litigants that the existing Texas Supreme Court precedents on jurisdiction, final judgment, liberal construction of briefing rules, and jury issues are no longer valid, opening a floodgate of new litigation on these matters. Petitioners will attempt to be brief in this statement. However, this has been made extremely difficult by Respondents' use of 15 pages for their opening statement. This has been done to discredit Mr. Schwager and unduly influence the Court with false and misleading statements prior to any ruling on the merits of Petitioners' Points of Error. Respondents have basically used the same statement that was contained in their "Appellees' Brief" for the First Court of Appeals. Petitioners have included their reply to this statement from their Appellants' Response Brief (filed Feb. 13, 1992) as Exhibit A. Petitioners have referenced: 1 U.S. Supreme Court case. 37 Texas Supreme Court cases. 1 Alaska Supreme Court case. 39, out of 81 cases referenced, to support their Application for Writ of Error. A reading of Petitioners' Application for Writ of Error clearly shows that the First Court of Appeals did not apply the existing law regarding *jurisdiction* or the true facts of this case in reaching their incorrect judgment. The First Court of Appeals did not review the entire record of this case as required to fulfill their mandate. The First Court of Appeals argues for the validity of the consolidation of Case #86-07376 and 87-14551. Thus, they were required to review the Record from Case #86-07376. *Ferguson v. Ferguson*, 338 S.W.2d 945, 947 (Tex. 1960). The appeals court's decision demonstrated that this was not accomplished. TCB devotes a portion of the first and second pages of their brief to the striking of 43 of Petitioners' 44 points of error. These 14 lines of rhetoric do not include one record reference. Further, TCB incorrectly states the facts of the case.

Respondent incorrectly states the holding in *Inpetco v. Texas American Bank/Houston N.A.*, 729 S.W.2d 300 (Tex.1987).A reading of this case does not state that Appellants are only entitled to a single opportunity to re-brief. In fact, the word *single* does not appear anywhere in that opinion. However, the word that does appear in that opinion is the word "such". The definition of that world found in *Black's Law Dictionary*, Fifth Edition, page 1284, is, "of that kind, having particular quality or character specified. Identical with, being the same as what has been mentioned." The preceding clearly demonstrates that the court should make objection to *specific* defects and irregularities in Appellants' brief prior to striking points of error. Petitioners were not allowed to re-brief after specific defects and/or irregularities were stated by the First Court of Appeals. (Order 2-24-92). Petitioners were ordered one time by the First Court of Appeals to re-brief for defects and/or irregularities. The only reason given at that time was the lack of S.F. references. (Order 5-16-91). This re-brief was accomplished and approved by the First Court of Appeals. (Order 8-8-91). Complaints made about Petitioners' brief in the First Court of Appeals by TCB were answered in (Petitioners') Appellants' Response Brief, (Feb. 13, 1992). Petitioners made a detailed review in their Application for Writ of Error (A3-1-9) on the circumstances surrounding the re-briefing, not a partial one as TCB has submitted. TCB also ignores the fact that the First Court of Appeals refused to consider Appellants' Brief filed Feb. 13, 1992. The Feb. 13, 1992 brief was not reviewed by the First Court of Appeals prior to the court striking 42 of 44 points of error *two days* before oral argument. Petitioners state certain points here to show that refusal of the trial court to allow into evidence the Axelrad Letter (Def. Exh. 124, p.3, ¶ 3), Stringer Memos (Def. Exh. 55, 56), and Stringer Adverse Loan Documents (Def. Exh. 57-62), allowed TCB to make false statements which influenced the jury to rule against "Schwagers." Not less than three times, beginning on page 4, in Respondents' brief, they demonstrate the following.

**TCB WAS NOT A PARTY TO NOR WAS EVEN AWARE OF THE 1986 SUIT UNTIL THE TRIAL HAD ALREADY BEGUN. NONE OF ITS AGENTS TESTIFIED OR WERE PRESENT AT THAT TRIAL NOR WERE THEY DEPOSED IN PREPARATION FOR IT. TR. 135-40, S.F. 366, 11/21/89 312-313."** Stephen Smith, an attorney who did work for TCB, and thus an agent, testified at the trial of Case #86-07376. Mr. Smithwas the one who suggested using TCB for the refinancing, not Mr. Schwager. (Testimony of Stephen Smith Hearing July 14, 1986 pp. 8,9). Mr. Smith was still working for TCB when he testified at trial in November of 1989. (S.F. 1634). Mr. Smith's testimony further shows the falsity of TCB's statement about not having knowledge of the 1986 lawsuit when he testified (7/14/89) as follows when questioned by the Limiteds' attorneys:

**Q: HAVE YOU HAD ANY CONVERSATIONS WITH THE TEXAS COMMERCE BANK-CHEMICAL SINCE THE NOVEMBER 27TH 1985 MEETING WITH THE DEFENDANTS IN THIS LAWSUIT? WITH RESPECT TO THE LOAN WHICH THAT BANK MADE TO THE PARTNERSHIP.**

**A: ONLY DISCUSSION I'VE HAD IS THAT THERE WAS ONGOING LITIGATION AND THEY SAID THAT THEY UNDERSTOOD THERE WAS SOME PROBLEMS, CONFLICTS AMONG THE PARTNERS. AS LONG AS THE PAYMENTS WERE MADE, THEY WEREN'T CONCERNED AND THIS WAS SORT OF NOT SOMETHING THEY CALLED ME; IT WAS JUST A MATTER OF PASSING CONVERSATION IT WAS OF NO MOMENT TO THEM. S.F. TESTIMONY OF STEPHEN J. SMITH FROM THE HEARING BEGINNING JULY 14, 1986. PAGE 66.** **Note:** Mr. Smith was called as an adverse witness by plaintiff Bruce B. Schwager et al. Mr. Smith settled Schwager's lawsuit against him for $100,000. S.F. 1282. TCB's continuing argument on pages 5 and 6 about the complexity of the case and size of the record demonstrates that the First Court of Appeals erred in denying Petitioners' (Appellants') brief of 99 pages. TCB for some reason brings up the attempted dismissal of T. Ransom Cornish.

However, they make no attempt to mention that Alfred Zimmerman, Axelrad's partner, testified at trial. It is undisputed that Zimmerman's law firm argued against Petitioners' Motion for a New Trial even after having testified against "Schwagers" at trial. (Tr. 1302) (S.F. Vol. 11-21-89, pp. 3-52). The First Court of Appeals did not rule on Petitioners' claim that they were entitled to open this case first as they were Plaintiffs. The appeals court ignored this argument. (Motion for Rehearing 3-27-92). TCB for the first time states in its reply brief (7-20-92) that the 1986 judgment was a partial judgment which is not true, as the record and statement by the trial court Judge O'Brien, presiding demonstrates "the 1986 lawsuit is over and final." (S.F. Hearing May 26, 1992, p.34). Further, the statement that the receiver was appointed to *manage* the land is untrue. (S.F. 593). On page 10 of the Respondents' Petition, they give the best example of the false statements being made. TCB tries to gain favor with this Court by attempting to show that the Limiteds had permission to talk to TCB prior to TCB having met with the Limiteds. TCB states that in either October or November 1986, Limited Partners Meyer Fallas and William Cramer approached TCB in order to seek to refinance the loan. However, their S.F. ref. 425 clearly shows that it was in October 1986. TCB also states that prior to TCB's talking to the Limiteds, Receiver Everett had informed Charles Best, a TCB bank officer and party to this case that Judge O'Brien had approved TCB's meeting with the Limiteds for the purpose of negotiating a refinancing agreement. S.F. 385. Mr. Best thus testified, S.F. 385, that he had the court's permission to speak with the Limiteds, and he later testified that was in October of 1986. S.F. 425. However, their own witness, Mr. Everett testified that he first gave permission in either December or January. (S.F. 598-600). **THUS IT WAS IMPOSSIBLE FOR TCB TO HAVE PERMISSION. CERTAINLY DECEMBER COMES AFTER OCTOBER.**

**Note:** Petitioners contend that Judge O'Brien did not give permission either in October, November, December, January, or anytime. The receiver was the one to speak to Bank, not Limiteds. If Judge O'Brien would have been allowed to testify, this would have been proved. (Point of Error 19, Appellants' Opening Brief).

Petitioners' briefs filed in this Court and the First Court of Appeals have been verified. (Exhibit B). **PETITIONERS' RESPONSE TO RESPONDENTS' REPLY POINT #1 TO PETITIONERS' POINT OF ERROR #1: THE COURT OF APPEALS ERRED IN HOLDING THAT THE TRIAL COURT HAD JURISDICTION TO CONSOLIDATE CASE #86-07376 WITH CASE #87-14551, AND RETRY CASE #86-07376 BASED ON THE JUDGMENT RENDERED IN CASE #86-07376 NOT BEING FINAL. (OPINION AT 6).**

The case law shown by Petitioners unequivocally proves that the trial court lost jurisdiction over Case #86-07376 after the judgment became final, and, thus, there was no jurisdiction over the consolidated case. Petitioners' Point of Error #1 is conclusive. It contains the utmost detail of the facts and law pertaining to this case, which is supported by S.F. and Record references. The case law is supported by no less than seventeen (17) Texas Supreme Court cases. Respondents do not give one Supreme Court case to support their position on the finality of the 1986 Judgment.

**Note:** The Northeast School District case holding stated by the First Court of Appeals is erroneous. The primary holding in that case is that a judgment is presumed final after a conventional trial on the merits. (State Bar of Texas Advanced Appellate Practice Course 1987 (at page G-8). There was nothing left unresolved in the 1986 Judgment. (Application for Writ of Error A2-9-14). There is absolutely no basis in law or fact to support the First Court of Appeals' ruling that the judgment issued in Case #86-07376 was interlocutory.

**Note:** In over five years of litigation, TCB never made the claim that the appointment of the receiver made the 1986 judgment interlocutory. Thus, why then did the First Court of Appeals make this ruling? A final judgment is one that determines the right of all the parties to the suit and disposes of all the issues resolved. The judgment entered by Judge O'Brien in Case #86-07376 left nothing to be resolved. As Judge O'Brien stated, "The 1986 lawsuit is over and final." (S.F. Hearing May 26, 1987, p. 34 - Application for Writ of Error A-2-19).

It is unconscionable that TCB has the audacity to suggest to this Court that Judge O'Brien rendered an incomplete judgment which was advantageous for Petitioners. (p. 16). Further, a final judgment is one that terminates the litigation of the parties on the *merits* of the case so that nothing remains to be done but to *execute* the judgment according to its terms. Judge O'Brien stated, "The only thing I have any continuing jurisdiction over in aid of my judgment is a receiver, but that doesn't mean everybody can turn around and sue everybody and bring up a whole new thing that doesn't have anything to do with the receiver." (S.F. Hearing May 26, 1987, p. 36 - Application for Writ of Error A2-21). Judge O'Brien made it abundantly clear that Case #86-07376 was not consolidated with Case #87-14551 (Order signed July 27, 1987 - Application for Writ of Error A2-22), and it is unconscionable for TCB to suggest otherwise. Exhibit C contains some of the false and misleading statements made by TCB contained on pages 15, 16, 17, 18, and 19 of their brief. "TCB" totally ignores the existence of any of the Texas Supreme Court cases listed by "Schwager." Special note is made of *Citizens State Bank v. Caney Investments*, 746 S.W.2d 477 (Tex. 1988). To show the extreme importance of this case, Petitioners respectfully request that this Court review the following statement. From the beginning of this controversy, Respondent TCB has sought to ignore or, at best, gloss over the jurisdictional issues raised by "Schwagers." TCB has asserted that the appointment of the receiver vested the trial court with continuing plenary jurisdiction over the property. However, "Schwagers" have contended that the jurisdiction retained is limited to entry of appropriate orders to enforce the judgment and administer the receivership. The Supreme Court has previously held that the mere appointment of a receiver in an otherwise final judgment does not vest the trial court with continuing plenary jurisdiction over the parties or property involved. To have held otherwise and adopted the broad theory of jurisdiction espoused by the First Court of Appeals would virtually destroy the doctrine of "finality of judgments" and cause total chaos in all post-judgment receiverships. Once a final judgment has been entered, case law mandates that the trial court loses jurisdiction and that a consolidation filed thereafter must be dismissed.

The critical question thus becomes whether the 1986 judgment, from which there was no appeal, became final upon the expiration of thirty (30) days from its entry date or whether the appointment of the receiver kept the judgment from becoming final. A review of the judgment and the applicable authorities shows that the judgment became final notwithstanding the appointment of the receiver. On page one, the "86" Judgment states the " all issues of fact and law have been submitted to the Court and the Court having considered evidence, issues the following Judgment." The Judgment did not reserve any rulings on any issues or as to any parties then before the court. As previously indicated, the judge signed the order on October 14, 1986, and there was no appeal. A judgment is final when there has been an adjudication as to all parties and pending issues, based on facts then before the court. *Gani v. Gani*, 495 S.W.2d 576 (Tex. 1973). Without question, the judgment in question here is addressed all contested issues and all litigants then before the court. Although a receiver was appointed, his duties were specifically detailed and there are no issues remaining to be litigated as a result of the receivership. That certain provisions of a judgment are to be performed in the future does not preclude a judgment from becoming final. *Schwartz v. Jefferson*, 520 S.W.2d 881, 887 (Tex. 1975). In *Schwartz*, Mrs. Franzheim was awarded $300,000.00, provided that the sum would be used by her for the construction or purchase of a new residence for herself and children within one year from the date of the judgment. Mr. Franzheim was awarded the residence previously occupied by the parties, subject to Mrs. Franzheim's right to occupy the property for one year from the entry of the judgment or until she moved to a new residence, whichever occurred first. *Id.* at 883. There is no substantive difference between those provisions and a provision that, for example, appoints a receiver to sell the property of B.B.M.M., Ltd. with the partnership agreement being held *valid*. The partnership agreement clearly spelled out the distribution of proceeds from the sale. Just as those post-judgment actions in *Schwartz* did not preclude the divorce decree from becoming final, neither does the appointment of the receiver in this action. The receiver's only duty was to sell the property located at 110-112 Travis Street.

All issues before the court when the judgment was entered were adjucated and the receivership was but a means to enforce the judgment. "Schwagers" respectfully submit that the trial court lost plenary jurisdiction on the expiration of thirty days after the judgment was signed. After that time, the trial court retained only its inherent power to clarify or enforce its judgment, which enforcement would include the administration of the receivership. *See McGhee v. Eply*, 661 S.W.2d 924, 926 (Tex. 1983); Rule 326b, Tex. R. Civ. P. Under no circumstances could the consolidation of the cases and the actions of the trial court Judge Wittig presiding with respect thereto be construed as clarification or enforcement of the final judgment issued in Case #86-07376. Judge Wittig consolidated Case #86-07376 and Case #87-14551 on May 23, 1988 at the request of TCB. (Exhibit D). For these reasons, "Schwagers" maintain that the Supreme Court should reverse the judgment and dismiss the case.

**RESPONSE TO RESPONDENTS' REPLY POINT #2 TO PETITIONERS' POINT OF ERROR #2: THE COURT OF APPEALS ERRED IN HOLDING THAT THE TRIAL COURT DID NOT RULE ERRONEOUSLY IN DENYING THE APPELLANTS THE RIGHT TO OPEN AND CONCLUDE THE PRESENTATION OF THE CASE, INCLUDING THE VOIR DIRE, THE OPENING STATEMENT, THE EVIDENCE AND THE CLOSING ARGUMENTS. (OPINION AT 7)** Petitioners' Point of Error #2 is certainly based on the facts and law of the case. Again, TCB attempts to make an opening statement without any supporting S.F. or Record references. Petitions' point of error is conclusive; it clearly establishes the basis for this Court to reverse the judgment in this case. "Schwagers" have met all requirements to justify this result. Petitioners again point out that the ruling of the First Court of Appeals ignores the main thrust of this Point of Error in their opinion. TRCP #685 sets out without equivocation that "Schwagers" were the Plaintiffs in Case #87-14551. The TRO issued by Judge O'Brien (Tr.230) on March 27, 1987 established "Schwagers" as Plaintiffs in the 1987 case. TCB now tries to make some vain but futile attempt to revive the wrongful ruling of the First Court of Appeals.

On March 20, 1987, TCB wrongfully accelerated the B.B.M.M., Ltd. note (TCB Exh. #24). After reviewing the letter, Petitioners filed their claims against TCB in the form of a TRO. It should be noted that any district court could have issued this TRO and the effect would have been the same. Schwager would be designated as Plaintiff. (TRCP #685). Judge O'Brien unquestionably controverted the argument put forth by TCB when he changed the case number on the TRO issued on March 27, 1987 to 87-14551. (Application for Writ of Error A-2-22). By TCB's own admission, it did not make any claims against "Schwagers" until March 30, 1987. It was unnecessary for "Schwagers" to file a separate petition as Judge O'Brien consolidated the *claims* made by "Schwagers" against TCB in the TRO of March 27, 1987 with the *claims* made by TCB in their petition dated March 30, 1987. Based on these facts, TCB cannot dispute that "Schwagers", not TCB, were the true plaintiffs in case #87-14551. The only jury issue submitted for TCB was one on conversion. As a matter of law, there could be no conversion; thus, TCB had no right to open and close. (Petitioners' Point of Error #2, pp. 24, 25 of Application). Petitioners have demonstrated without a doubt reversible error by not allowing "Schwagers" to open and close as shown in section B of Point of Error #2 (pp. 23, 24 of Application) titled "A Materially Unfair Trial Was Held". When defendant has burden of proof on all special issues, they are entitled to open and close. *Meeve v. Wade*, 512 S.W.2d 372, 374 (Tex. Civ. App.--Austin 1974 writ ref'd n.r.e.). Exhibit E contains some of the false and misleading statements made by TCB in Reply Point #2. It is conclusive that Judge O'Brien did not consolidate Case #86-07376 and Case #87-14551. Judge O'Brien, as previously indicated by Petitioners, knew he could not consolidate a pending case with one in which a final judgment (Tr. 1347 - Application for Writ of Error A2-4) had been rendered. Judge O'Brien further recognized his lack of jurisdiction when he stated, " It is not an amended petition against his clients to which they were never a party in a lawsuit that I'm sure I've lost jurisdiction that was entered in, God knows--October of '86." (S.F. Hearing May 26, 1987, p. 35).

Further, a full reading of Petitioners' Point of Error #2 conclusively establishes the need for this Court to reverse the judgment against Petitioners so that justice can be served in the Court of last resort for civil cases in the State of Texas.

**PETITIONERS' RESPONSE TO RESPONDENTS' REPLY POINT #3 TO PETITIONERS' POINT OF ERROR #3: THE FIRST COURT OF APPEALS ERRED WHEN IT STRUCK 42 OF THE APPELLANTS' 44 POINTS OF ERROR BASED ON *HENRY S. MILLER MANAGEMENT CORP. v HOUSTON STATE BANK*, 792 S.W.2D 133-135 (TEX. APP.--HOUSTON [1ST DIST.] 1990, WRIT DENIED), AND TRAP 74. (OPINION AT 5).** Petitioners' Point of Error #3 of their Application for Writ of Error conclusively establishes the support for the relief requested therein. Paragraphs 3 and 4 located on page 2 of the Application are sufficient cause to have this Court extend relief requested. Respondents' brief does not justify the outrageous rulings of the First Court of Appeals.

TCB makes a vain attempt to justify the ruling by distorting the record and using untrue statements of fact and law. Based on the actual holding in cases referenced by TCB, none of these cases are relevant to claims made in Petitioners' Point of Error #3. For example, Respondents use *White Budd Van Ness Partnership v. Major Gladys Drive Joint Venture*, 811 S.W.2d 541 (Tex. 1991), and *Buffalo v. Robbins*, 811 S.W.2d 541 (Tex. 1991), to cloud the issue in this case. Neither of these cases have relevance as they both pertain to striking of appeal for refusal to comply with the fifty-page limit for their brief. (TRAP 131(i)). What is even more outrageous is the false statements made by TCB in its attempt to justify its invalid position. On page 26 of Respondents' brief, it states the following: **"The Court of Appeals ordered the Schwager Parties to rebrief all points of error not already in compliance with the Texas Rules of Appellate Procedure."** A copy of the ruling made on May 16, 1991 by the First Court of Appeals is enclosed. (Exhibit F). A reading of this order will show that TCB's quoted statement is untrue.

**THIS ORDER ONLY REQUIRED PETITIONERS TO ADD STATEMENTS OF FACTS REFERENCES TO THEIR BRIEF, WHICH WAS CLEARLY ACCOMPLISHED IN PETITIONERS BRIEF FILED ON JUNE 17, 1992.** It is undisputed that TRAP 74(o), 74(p), 83 and 185 are controlling this case. Rules 83 and 185 unequivocally show that the re-briefing shall be based on previously mentioned defects or irregularities by the use of the word "such". There is absolutely no evidence that Petitioners refused to re-brief based on mentioned "such" defects or irregularities. TCB admits on page 26 of its brief that the First Court of Appeals approved Appellants' Opening Brief filed on June 17, 1991. After making this admission, it then has the audacity to state, "Upon further reflection, it struck 42 of 44 points of error because the rebriefed points of error again failed to comply with Tex. R. App. P. 74." It is incredible that this further reflection took place on *Feb. 22, 1992 at approximately 3:00pm., some 42 HOURS prior to oral argument.* The First Court of Appeals approved Appellants' Opening Brief on August 8, 1991 by denying the Limiteds' Motion to Strike. (Application for Writ of Error p.28, item 13). Thus, this incredible **FURTHER REFLECTION TOOK PLACE approximately SEVEN MONTHS LATER.**

It is also noted that TCB tried to mislead this Court by using untrue and misleading statements in its version of the facts surrounding the briefs submitted to the First Court of Appeals. Petitioners have stated the true and complete facts on pages 26, 27, and 28 of their Application for Writ of Error #1-#19. Appendix III of Petitioners' Application for Writ of Error is a detailed analysis of the First Court of Appeals' ruling striking 42 of 44 points of error. Due to the detrimental effect Alfred Zimmerman's testimony had on "Schwagers" case before the jury, Point of Error #18 from Appellants' Opening Brief is herein reemphasized. The First Court of Appeals struck Petitioners' (Appellants') Point of Error #18 (A3-2 Application) due to Petitioners' trial attorney not objecting to Alfred Zimmerman's testimony. Point of Error #18 references S.F. Vol. 11-21-89, pp. 3-52 to support its position that an objection was made and denied.

It was unconscionable for the First Court of Appeals to strike Appellants' Point of Error #18 when the facts of the case are read as follows: On page 3 of S.F. reference, Mr. Nixon, Petitioners' trial attorney, stated, **"I OBJECT TO ZIMMERMAN BEING CALLED...."** On page 6, L. 17 of the preceding S.F. reference, Judge Wittig states the following: **"OKAY, THE COURT OVERRULES YOUR OBJECTION."** An appellant should be accorded the right to appellant review. *Salvaggio v. Brazos Cty. Water Control*, 598 S.W.2d 227, 229 (Tex. 1990). The rules of procedure should be interpreted to prevent the loss of the right of appeal, not to facilitate loss. *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 386 (1978). Respondents do not contest one of the Supreme Court cases that require a liberal construction of the rules. Further, TCB demonstrates that *Most Worshipful Prince Hall v. Jackson*, 732 S.W.2d 407, 412 (Tex. App.--Dallas 1987, writ ref'd n.r.e.), does not apply to the case of appeal. It quotes the following: "It is not the duty of the court of appeals to make an independent search of the statement of facts." It is undisputed that Petitioners' appeals court briefs contained statements of facts references. Thus, it was the obligation of the First Court of Appeals to read these Statement of Facts references as required by the U.S. and Texas Supreme Courts. Petitioners did not plead that the appeals court was required to make an independent search of the Statement of Facts, only that it review the Statement of Facts already contained in Appellants' *briefs* which were filed with the First Court of Appeals on 6/17/91 and 2/13/92. In closing, the Respondents make a last desperate attempt to deny Petitioners' right to appeal. TCB references *Cronen v. County Storage Lot*, No. 01-88-01079-CV at 3 1992 WL 117310 (Tex. App.--Houston [1st Dist.] June 4, 1992, and *Birdo v. Hol Brook*, 775 S.W.2d 411, 414 (Tex. App.--Fort Worth 1989, Writ denied). These cases in part deal with handwritten briefs and the filing of frivolous or harassing suits which are not relevant to the case before this Court. However, *Cronen, id.*, supports that portion of Petitioners' Point of Error #3 that deals with an appellate review for substance rather than form.

*Cronen, id.*, at page 3, footnote 3, states the following: In *City of San Antonio v. Rodriguez*, 35 Tex. Sup. Ct. J. 536, 537 (February 26, 1992), and *Mueller v. Sararia*, 35 Tex. Sup. Ct. J. 589-90, (March 25, 1992), the court reaffirmed the policy that "the decisions of the courts of appeals [should] turn on substance rather than procedural technicality." *Crown Life Ins. Co. v. Estate of Gonzales*, 820 S.W.2d 121 (Tex. 1991) (per curiam). *Also Grand Prairie Sch. D. v. Southern Parts*, 813 S.W.2d 499, 500 (Tex. 1991). **Note:** TCB, on page 31 of its Respondents' Brief, references *Grand Prairie Sch. D. v. Southern Parts Imports*, 803 S.W.2d 762, 768 (Tex. App.--Dallas 1991, no writ), for authority to support its arguments. It was reckless of TCB to use this case to support its arguments as it had been reversed. *See Grand Prairie*, 813 S.W.2d at 499. Also, the writ history is obviously incorrect. Petitioners have conclusively established that they are entitled to a reversal of the judgment based on Point of Error #3 of the Application for Writ of Error. A detailed list of the false and misleading statements of Respondents' Reply have not been included in the interest of brevity. **PETITIONERS' RESPONSE TO RESPONDENTS' REPLY POINT #4 TO PETITIONERS' POINT OF ERROR #3: THE FIRST COURT OF APPEALS ERRED WHEN IT STRUCK 42 OF THE APPELLANTS' 44 POINTS OF ERROR BASED ON *HENRY S. MILLER MANAGEMENT CORP v. HOUSTON STATE BANK*, 792 S.W.2D 133-135 (TEX. APP.--HOUSTON [1ST DIST.] 1990, WRIT DENIED), AND TRAP 74. (OPINION AT 5).** TCB again attempts to confuse the issue in this case by changing the numbering system. Respondents' statements made in this point are not true and have no basis of law or fact. It is incredible that after over two years of appeals process which did not decide on the merits of 43 of Petitioners' 44 points of error, TCB has proclaimed itself judge and jury and decided there is no merit to Petitioners' appeal. TCB demonstrates that it is requesting that this Court review Appellants' briefs filed on June 17, 1991 and Feb. 13, 1992 in the First Court of Appeals and decide the merits of all of the Petitioners' (Appellants') appeal (44 points of error, June 17, 1991 brief, and all response points, Feb. 13, 1992 brief).

Petitioners agree with TCB that this Court should review Petitioners' (Appellants') appeal filed with the First Court of Appeals in its totality. **PETITIONERS' RESPONSE TO RESPONDENTS' REPLY POINT #5 TO PETITIONERS' POINT OF ERROR #4: THE FIRST COURT OF APPEALS ERRED BY NOT REVERSING THE JUDGMENT AND DISMISSING THE CASE DUE TO THE JUDGMENT RENDERED IN CASE #87-14551 BEING INTERLOCUTORY. (OPINION AT 6).** When TCB uses the terms "duplicative, "difficult to discern" and "nonsensical," it is because they have no legitimate argument to defeat Petitioners' point of error. As usual, TCB starts out by making untrue and misleading statements. It is clear that this point of error is initiated by the ruling of the First Court of Appeals that the 1986 Judgment is interlocutory. Thus, it could not have been raised in the *trial court*. Further, Petitioners clearly show where they made this claim in the appeals court with the reference to Point of Error XI Motion for En Banc Rehearing, Mar. 27, 1992).TCB now take time to argue the merits of its summary judgment "issued" by Judge Wittig. Petitioners have argued and continue to argue that there was no Summary Judgment Order. However, Petitioners would like to take this opportunity to show the Court the following:

1. TCB references First Supp. Tr. 228-229 and Tr. 1358 show they obtained a Summary Judgment.
   **NEITHER OF THESE DOCUMENTS MENTIONS BETTE SCHWAGER.**
   So, even if they were valid documents, they did not pertain to Bette Schwager.
2. Bette Schwager had a constitutional right to plead and prove her cause of action. *Benson v. Wanda Petroleum Co.*, 468 S.W.2d 361, 362, 363 (Tex. 1971).
3. Bette Schwager's claims were for breach of good faith, breach of contract, mental anguish, salary, punitive damages and attorney fees. Tr. 907-935.

4. TCB required Bette Schwager to sign a Homestead Affidavit, thus having actual notice Bruce Schwager was married. (Tr. 929, 930, 931). **Note:** This document alone establishes a contractual relationship with TCB, contrary to its pleadings. (Tr. 811-828).
5. Community property subject to the joint management of both spouses cannot be encumbered by one spouse acting without the other's consent. *Williams v. Portland State Bank*, 514 S.W.2d 124 (Tex. Civ. App.--Beaumont 1974); *Valone v. Miller*, 663 S.W.2d 97, 99 (Tex. App.--Houston [14th Dist.] 1983). Thus, TCB was required to have Bette Schwager sign pledge of "Jow Note." TCB was not entitled to her one half of "Jow Note." One spouse does not have the right to represent the other when the suit directly concerns community property. *Carlton v. Estate of Estes*, 664 S.W.2d 322, 323 (Tex. 1983). In a suit about community property, the rights of the wife may only be affected in suits in which she is called to answer. *Cooper v. Texas Gulf Industries, Inc.*, 513 S.W.2d 200 202 (Tex. 1974).
6. There was no basis for granting injunction and equitable relief against Bette Schwager as no injunction, equitable or affirmative relief was pled (Tr. 933-991) or proved by TCB against Bette Schwager, *E.A. Nichols v. J.D. Wheeler*, 304 S.W.2d 229, 230 (Tex. Civ. App.--Austin 1957).
7. The Jow Note interest of Bette Schwager was awarded to TCB without her permission. Tr. 1234, 1236.
8. It is undisputed that there was no service made upon Bette Schwager by TCB. TRCP 124. When there is no valid service of process against a defendant, the trial court lacks jurisdiction. *Trans-State Pavers, Inc. v. Haynes*, 808 S.W.2d 727, 728, 735 (Tex. App.--Beaumont 1991).

9. Accordingly, the lack of jurisdiction renders the judgment void. A void judgment's nullity cannot be waived. *Starne v. Holloway*, 779 S.W.2d 86 (Tex. App.--Dallas 1989).

The following will show that the alleged summary judgment issued by Judge Wittig is not valid:

1. The only evidence of any kind that could possibly show the existence of a summary judgment is the docket sheet entry. (Tr. 1358). The docket sheet is not evidence of any judgment being rendered. *Miller v. Kendall*, 804 S.W.2d 933, 943, 944 (Tex. App.--Houston [1st.Dist.] 1990).
2. In order for a judgment to be valid, it must be signed or orally pronounced in court with a record made of this announcement. *Dunn v. Dunn*, 439 S.W.2d 830, 823-833 (Tex. 1969) There is no record showing that the judgment was orally announced in open court.
3. The summary judgment, if valid as TCB contends, would not have been final, as the judgment would have been partial and thus interlocutory.
4. Summary judgment, if in fact there was one, was interlocutory and thus would be set aside when evidence was entered into record. *Hays v. Sullins*, 442 S.W.2d 494, 496 (C.A. Texas--El Paso 1969).

TCB does not controvert the main elements of this point of error. Respondents in their answer have opened the door that should allow an evaluation for merit of the 43 points of error that were stricken by the First Court of Appeals. TCB has used this answer to try to influence this Court on other elements of this appeal. After having accomplished this, it then makes a complaint about Petitioners' tactics, an argument it should have made at the beginning of this reply point instead of arguing the validity of the summary judgment which affected many elements of the appeal filed in the First Court of Appeals. TCB's attempt to discredit Petitioners is not a valid argument against Petitioners' Point of Error #4.

Petitioners restate that this point of error was triggered by the First Court of Appeals' ruling that the judgment rendered in Case #86-07376 was interlocutory. The judgment entered in Case #87-14557 does not specifically include the judgment rendered in Case #86-07376. This is required by law if the 1986 judgment was not final. **PETITIONERS' RESPONSE TO RESPONDENTS' REPLY POINT #6 TO PETITIONERS' POINT OF ERROR #5: THE COURT OF APPEALS ERRED IN AFFIRMING THE JUDGMENT FOR APPELLEES BY STRIKING POINT OF ERROR #7. FURTHER, THE TRIAL COURT ERRED BY REFUSING TO SUBMIT SPECIAL ISSUES TO THE JURY AS REQUESTED BY SCHWAGERS. (OPINION AT 5).** A review of Respondents' Reply establishes the need for this Court to review all of the 44 points of error for merit. In Appendix III of Petitioners' Application for Writ of Error, a detailed review of the stricken points of error is made, as to how it relates to the First Court of Appeals' ruling. TCB, knowing that it has no legitimate argument to refute Section A of Petitioners' Point of Error #5 in Application, has ignored same. Section A relates only to the briefing rules. TCB's statement about being allowed only two briefing chances is baseless. All legal and factual claims made in Petitioners' Point of Error #5 (#7 Appeal Brief) have merit. A reading of Respondents' reply demonstrates this. TCB's reply is basically the reply it made in its Appellees' Brief (July 29, 1991), which was answered by "Schwagers" in their Appellants' Response Brief. Point of Error #5 in Application for Writ of Error was based on the following documents: Appellants Opening Brief (June 17, 1991), Appellees Reply Brief (July 29, 1991), Appellants' Response Brief (Feb. 13, 1992), and Motion for En Banc Rehearing (March 27, 1992), among other things. Thus, most of the claims made here by TCB will have been answered by the conclusiveness of Petitioners' Point of Error #5 (#7 Appeal Brief). However, Petitioners believe certain salient points should be addressed at this time. The TCB lawsuit is based on the proper acceleration of the B.B.M.M., Ltd. note. As their acceleration was *improper*, there is no legal basis for TCB's lawsuit.

The law on acceleration has been clearly stated by the Texas Supreme Court in *Ogden v. Gibraltar Sav. Ass'n*, 643 S.W.2d 232, 233, 234 (Tex. 1982). 1. Note holder must present note and demand for payment

prior to exercising his right to accelerate.

2. Must afford mortgagor an opportunity to cure the default prior to acceleration.
3. Must give mortgagor notice of intent to accelerate prior to acceleration.

It is undisputed that TCB did not meet the requirements of the Texas Supreme Court when it wrongfully accelerated the note. The wrongful acceleration is detailed in Petitioners' Point of Error #5 in their Application. However, Petitioners again state that Judge Wittig also ignored this Court's decisions when he issued a directed verdict based solely on the disputed fact that Schwager knew the note had been unpaid since January 19, 1987. (Acceleration was done on March 20, 1987). S.F. Vol. 11-21-89, pp. 253-256). This was accomplished even though Judge Wittig acknowledged the inadequacy of TCB's promissory note. (S.F. 1597, LL. 7-9). It is made abundantly clear in *Ogden* that knowledge of default does eliminate the requirements shown in the preceding (1,2,3). *Ogden* states on page 233 the following: **IT IS UNDISPUTED OGDEN WAS IN DEFAULT ON HIS NOTE PAYMENTS.** Exhibit G contains some of the false and misleading statements made by TCB in Reply Point #6. TCB's reference to *Collara v. Navarro*, 574 S.W.2d 65, 68 (Tex. 1978), is misplaced. In *Collara*, the Court held that there was *no evidence*; thus, reasonable minds could not differ. In the instant case, Bruce Schwager testified under oath that the documents had been forged. (Borrower's Statement Deed of Trust). Also, Bill of Exception was made on Schwagers handwriting expert's testimony. S.F. 1697. Mr. Nixon, Schwager's trial attorney, objected to TCB's handwriting expert. S.F. 1218. Petitioners are convinced that if the Texas Supreme Court reviews Point of Error #5 of Application for Writ of Error on its merit, the Court will reverse judgment in this case.

## CONCLUSION

Schwager Parties filed adequate briefs in compliance with TRAP and decisions made by this Court. Therefore, Petitioners did not waive any of the 44 points of error. It is clear that the First Court of Appeals denied Petitioners their legal right to an appeal by striking 43 of their 44 points of error. The one point of that was not stricken was one of fundamental error on jurisdiction. This point would also have been stricken had it not been one of fundamental error. Thus, the First Court of Appeals effectively denied Petitioners' right of appeal as previously shown by referenced U.S. and Texas Supreme Court cases. The Application for Writ of Error made to this Court alone is sufficient to grant the relief requested by Schwagers. TCB and the Limiteds have opened the door for this Court to review the stricken points of error for merit, or, in the alternative, refer this case to the appeals court to accomplish this review. Respondents have opened the door for this action by the following:

1. TCB's Reply Point #4 of its reply brief attempts to demonstrate that the stricken points of error were without merit. Also, the striking of these points of error was harmless.
2. Limiteds submitted their appeals brief in the Supreme Court. This brief was an attempted rebuttal to all 44 points of error.

**Note:** Petitioners have included in Exhibit H the answer to Limited Appellees' brief that was contained in Appellants' Response Brief filed Feb. 13, 1992.

## PRAYER FOR RELIEF

Wherefore, Petitioners "Schwagers" request that the relief requested in the Application for Writ of Error (dated May 21, 1992) be granted. Petitioners respectfully request such other and further relief to which they may be justly entitled.

Respectfully submitted,

T. Ransom Cornish
State Bar No. 04836100
3131 Eastside, Suite 330
Houston, Texas 77098
Telephone(713) 528-1937
Fax: (713) 523-0547
ATTORNEY FOR
PETITIONERS

## CERTIFICATE OF SERVICE

I, T. Ransom Cornish, certify that a true and correct copy of the foregoing was sent to Joseph D. Cheavens, One Shell Plaza, 910 Louisiana, Houston, Texas 77002, Neil S. Levin, 4828 Loop Central Drive, Suite 710, Houston, Texas 77081, and Newton B. Schwartz, 723 Main, Suite 325, Houston, Texas 77002 by United States mail, postage prepaid, on this the 3rd day of August, 1992.

_____

T. Ransom Cornish

## VERIFICATION

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Bruce B. Schwager, known to be person whose name is subscribed to the foregoing instrument as Petitioner who, after being by me duly sworn, on his oath, did depose and testify that he read the foregoing instrument, that all of the facts alleged therein are true and correct and within his own personal knowledge.

_____

Bruce B. Schwager

SUBSCRIBED AND SWORN TO on this the 3rd day of August, 1992, to certify which witness my hand and seal of office.

_____

NOTARY PUBLIC IN
AND FOR THE STATE
OF TEXAS

My commission expires:

_____

APPENDIX 1

Supreme Court Justices Contributions--1988 thru 1990

| Firm Name: | Cook | Cornyn | Doggett | Gammage | Gonzalez | Hecht | Hightower | Mauzy | Phillips |
|---|---|---|---|---|---|---|---|---|---|
| Abraham, Watkins et al., | | | $3025 | $10100 | | | | $18277 | |
| Akin, Gump et al., | | $5950 | | | $7650 | $5625 | | $1500 | $15675 |
| Andrews & Kurth | $650 | $8475 | $25 | $1000 | $650 | $3200 | | | $29725 |
| Arnold, White et al., | | $1025 | | | $500 | | | | $8225 |
| Baker & Botts | $14357 | $17575 | | $19433 | $23175 | $7300 | $1500 | | $113867 |
| Baldwin & Baldwin | | | $5000 | $11000 | $5000 | | | $45500 | |
| Baron & Budd | | | $1265 | $5000 | | | $2000 | $35985 | |
| Bracewell & Patterson | $16225 | $8100 | 0 | $5630 | $4075 | $250 | $6150 | | $56497 |
| Brown, Maroney et al., | $1000 | $1800 | $700 | | $2600 | $200 | | | $7200 |
| Butler & Binion | $1400 | $6650 | | $4200 | | $1350 | | | $10960 |
| Cantey & Hanger | $6300 | $1350 | $100 | $1400 | $7625 | $5200 | | | $12375 |
| Carrington, Coleman et al., | $300 | $250 | | | $200 | $1275 | | | $4525 |
| Chamberlain, Hrdlicka et al., | $350 | $250 | | $6313 | $50 | $100 | | | $4965 |
| Clark, Thomas et al., | $100 | $1535 | | $2200 | $725 | $3000 | | | $15570 |
| Cowles & Thompson | $2100 | $2000 | $50 | | $100 | $1000 | $1000 | | $7380 |
| Crain, Caton & James | $1500 | $3000 | | | | | | | $12225 |
| Doherty & Williamson | | $5000 | | $2000 | | | | $17000 | $2000 |
| Edwards & Terry | | | $5000 | | | | $3000 | $10260 | |

Supreme Court Justices Contributions--1988 thru 1990

| Firm Name: | Cook | Cornyn | Doggett | Gammage | Gonzalez | Hecht | Hightower | Mauzy | Phillips |
|---|---|---|---|---|---|---|---|---|---|
| Ernest Cannon et al., | | | $5000 | $10500 | | | | $20000 | |
| Fisher, Gallagher et al., | $5000 | | $1000 | $15000 | | | $3500 | $30250 | $6000 |
| Fulbright & Jaworski | $6675 | $10000 | | $5450 | $3635 | $750 | $2735 | | $51020 |
| Gardere & Wynne | $5200 | $5100 | | $5000 | $200 | $5850 | | | $8975 |
| Glenn Vickery et al., | | | $2500 | $35121 | | | $1000 | $2000 | |
| Graves, Dougherty et al., | $500 | $5225 | $1725 | $7450 | $2800 | $100 | $1000 | | $15262 |
| Grece, Locke & Hebdon | $2200 | $11750 | $100 | | $13825 | $700 | | | $15710 |
| Hardy, Milutin & Johns | | | $5000 | $7500 | | | $5000 | $14000 | |
| Haynes & Boone | $5100 | $8535 | | $3000 | | $7650 | $2500 | | $22815 |
| Helm, Pletcher et al., | $5000 | | $10125 | $21000 | $600 | | $5500 | $53500 | |

Total Contributions

| Firm Name: | |
|---|---|
| Abraham, Watkins et al., | $31,402.00 |
| Akin, Gump et al., | $36,400.00 |
| Andrews & Kurth | $43,700.00 |
| Arnold, White et al., | $9,750.00 |
| Baker & Botts | $197,209.00 |
| Baldwin & Baldwin | $66,500.00 |
| Baron & Budd | $55,635.00 |
| Bracewell & Patterson | $97,627.00 |
| Brown, Maroney et al., | $12,800.00 |
| Butler & Binion | $20,460.00 |
| Cantey & Hanger | $37,050.00 |
| Carrington, Coleman et al., | $7,950.00 |
| Chamberlain, Hrdlicka et al., | $5,715.00 |
| Clark, Thomas et al., | $27,293.00 |
| Cowles & Thompson | $15,780.00 |
| Crain, Caton, & James | $16,725.00 |
| Doherty & Williamson | $29,000.00 |
| Edwards & Terry | $38,260.00 |
| Ernest Cannon et al., | $35,500.00 |
| Fisher, Gallagher et al., | $60,750.00 |
| Fulbright & Jaworski | $80,265.00 |
| Gardere & Wynne | $30,325.00 |
| Glenn Vickery et al., | $40,621.00 |
| Graves, Dougherty et al., | $34,062.00 |
| Groce, Locke & Hebdon | $44,285.00 |
| Hardy, Milutin & Johns | $31,500.00 |
| Haynes & Boone | $49,600.00 |
| Helm, Pletcher et al., | $95,725.00 |

APPENDIX J

The State of Texas
Sharolyn Wood
Judge, 127th District Court
Harris County Courthouse
Houston, Texas 77008

February 12, 1993
2:00 p.m.

TO: JUDGES IN HARRIS COUNTY

The following phone message was just received from the Clerk of the Fifth Circuit Court of Appeals:

"Late yesterday afternoon, the Fifth Circuit Court of Appeals granted rehearing in Lulac v. Clements on its own motion and vacated the panel opinion. Oral arguments are set for the week of May 24th. The exact date has not yet been set. No additional briefing has been requested. One more developement--there're coming fast. There was a settlement meeting set for next Tuesday. That meeting had been cancelled by the plaintiffs prior to us receiving this message. The reason given for the cancellation was a trial conflict for one of the plaintiff's counsel. We continue to hear that the attorney general is working on settlement proposals. We have not been invited. At the meeting with Gene and Mike at lunch, there was a consensus reached that while the judges as a group may not totally agree on specific details to fix the current system, we do agree that small subdistricts using legislative district are politicized, problems from campaign contributions not being solved, judges being placed in power struggles with politicians from the same district, and the increase in power of special interest groups to attempt to influence legal decisions. Your input is still sought. I am writing up a proposal and will send you a copy.

That's all for now. Sharolyn

## APPENDIX K

## VERIFICATION

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Bruce B. Schwager, known to be the person whose name is subscribed to the foregoing instrument as Petitioner who, after being by me duly sworn, on his oath, did depose and testify that he had read the foregoing instrument, that all of the facts alleged therein are true and correct and within his own personal knowledge.

Bruce B. Schwager

SUBSCRIBED AND SWORN TO on this the 29th day of March 1993, to certify which witness my hand and seal of office.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My commission expires:

December 11, 1993

GERALD A. ANHALT
Notary Public
STATE OF TEXAS
My Comm. Exp. DEC 11, 1993